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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,467	01/05/2004	Douglas S. Ransom	6270/105	4908
46260 75	90 09/19/2005		EXAMINER	
BRINKS HOR	FER GILSON & LIONE	RODRIGUE	RODRIGUEZ, PAUL L	
PO BOX 10395	i			
CHICAGO, IL 60610			ART UNIT	PAPER NUMBER
			2125	
			DATE MAII ED: 09/19/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

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	Application No.	Applicant(s)			
	10/752,467	RANSOM ET AL.			
Office Action Summary	Examiner	Art Unit			
	Paul L. Rodriguez	2125			
The MAILING DATE of this communication ap Period for Reply	pears on the cover sheet with the	correspondence address			
A SHORTENED STATUTORY PERIOD FOR REPL WHICHEVER IS LONGER, FROM THE MAILING D. - Extensions of time may be available under the provisions of 37 CFR 1. after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period. - Failure to reply within the set or extended period for reply will, by statut Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	DATE OF THIS COMMUNICATIO 136(a). In no event, however, may a reply be ti will apply and will expire SIX (6) MONTHS fror te, cause the application to become ABANDONI	N. mely filed n the mailing date of this communication. ED (35 U.S.C. § 133).			
Status					
1) Responsive to communication(s) filed on	·				
	-				
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is					
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims	•				
4) Claim(s) <u>1-49</u> is/are pending in the application 4a) Of the above claim(s) is/are withdra 5) Claim(s) is/are allowed. 6) Claim(s) <u>1-49</u> is/are rejected. 7) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and/o	awn from consideration.				
Application Papers					
9)⊠ The specification is objected to by the Examin	er.				
10)⊠ The drawing(s) filed on <u>05 January 2004</u> is/are: a)□ accepted or b)⊠ objected to by the Examiner.					
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).					
Replacement drawing sheet(s) including the correct 11) The oath or declaration is objected to by the E					
Priority under 35 U.S.C. § 119					
12) Acknowledgment is made of a claim for foreig a) All b) Some * c) None of: 1. Certified copies of the priority documer 2. Certified copies of the priority documer 3. Copies of the certified copies of the priority application from the International Burea * See the attached detailed Office action for a list	nts have been received. nts have been received in Applica ority documents have been receiv au (PCT Rule 17.2(a)).	tion No ved in this National Stage			
Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date see office action.	4) Interview Summar Paper No(s)/Mail I 5) Notice of Informal 6) Other:				

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DETAILED ACTION

1. Claims 1-49 are presented for examination.

Information Disclosure Statement

- The listing of references in the specification (paragraph 88) is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper."

 Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.
- 3. The information disclosure statement filed 3/4/05 lists all the references contained in the IDS submitted 3/15/04, 5/24/04 and 9/17/04. Because the references are redundant, the listing on the IDS submitted 3/15/04, 5/24/04 and 9/17/04 have been lined through and a signed copy of each is provided with this office action. An initialed and signed copy of the IDS submitted 3/4/05 is also provided with this office action.
- 4. The information discloser statement filed 5/23/05 has been received and considered.

Drawings

5. The drawings are objected to because figure 3b does not label the network. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include

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all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 111. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 151-157, 282, 326, 420, 422, 430, 436, 512, 520, 530, 700, 905, 1000, 1010, 1460, 1465. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

8. The examiner has provided a number of examples of the drawing deficiencies in the above, however, the list of deficiencies may not be all inclusive. Applicant should refer to these as examples of deficiencies and should make all the necessary corrections to eliminate the drawing objections.

Specification

9. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

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The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because there are an excess of 150 words.

Correction is required. See MPEP § 608.01(b).

10. The disclosure is objected to because of the following informalities:

Paragraph 2 requires update of continuing data.

Paragraph 50 line 9 lists backend servers 121-124, without listing 120.

Paragraph 50 line 10 lists reference number 111 and states not shown, creates a drawing objection.

Paragraph 52 line 8 states "IED 102-19".

Paragraph 58 line 18 refers to "monitoring component 258", previously "management component 258".

Paragraph 61 line 7 refers to "loads 301", figure 3b has load 317.

Paragraph 66 line 1 refers to power distribution system 301, previously load 301.

Paragraph 69 line 14 refers to 432, should be 430.

Paragraph 71 line 4 refers to backend server 511, figure 5b shows 511 as "kWh or kVa pulse sent to IED.

Paragraph 76 refers to a U.S. Pat application serial number that is left blank, requires updating.

Paragraph 77 line 3 refers to loads 724, 726, figure 7 shows 722, 724.

Paragraph 77 line 4 refers to generator 726, previously load.

Paragraph 79 line 6 refers to IED 804, 806, 806 is a load.

Paragraph 110 refers to a US patent without providing a patent number requires updating.

Paragraph 183 line 2 refers to "component 420", 420 is a step in figure 4b, should be

1420.

Appropriate correction is required.

11. The examiner has provided a number of examples of the specification deficiencies in the above, however, the list of deficiencies may not be all inclusive. Applicant should refer to these as examples of deficiencies and should make all the necessary corrections to eliminate the specification objections. Examiner would also like to point out that these are some of the same deficiencies that were point out by the Examiner in a number of the parent applications. Applicant should refer to some of the previous applications and make sure that previously cited deficiencies are also corrected.

Claim Objections

12. Claims 1, 2, 4, 5, 6, 10, 11, 15, 17, 19, 25, 26, 28, 29, 32-35, 38, 41, 43 and 49 are objected to because of the following informalities:

Claim 1 lines 20-21 states "said at least one secured inbound communications", would be better as "said secured inbound communications" to remain consistent with previous references in the claim.

Claim 2 lines 1-2 states "said at least one secured inbound communications", would be better as "said secured inbound communications" to remain consistent with previous references in the claim.

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Claim 4 lines 2-3 state "said outbound communication", previously plural communications.

Claim 5 line 2 states "said outbound communication", previously plural communications.

Claim 6 lines 1-2, line 6 and line 8 state "said at least one secured inbound communication", would be better as "said secured inbound communications" to remain consistent with previous references in the claim.

Claim 10 lines 1-2 state "said at least one secured inbound communication", would be better as "said secured inbound communications" to remain consistent with previous references in the claim.

Claim 11 lines 2-3 use acronyms, claim 11 depends from claim 10 and 1, there is no definition in this line of claims for the acronyms used. While claim 3 defines the acronyms, claim 3 is not part of claim 11.

Claim 15 lines 1-2 state "said outbound communication", previously plural communications.

Claim 15 line 4 refers to "XML", not defined in the claim.

Claim 17 lines 1-2 state "said at least one secured inbound communication", would be better as "said secured inbound communications" to remain consistent with previous references in the claim.

Claim 19 lines 4-7 state "said outbound communication", previously plural communications.

Claim 25 lines 19-20 states "said at least one secured inbound communications", would be better as "said secured inbound communications" to remain consistent with previous references in the claim.

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Claim 26 lines 1-2 and 4 state "said at least one secured inbound communication", previously plural communications.

Claim 28 lines 2-3 states "said outbound communication", previously plural communications.

Claim 29 line 2 states "said outbound communication", previously plural communications.

Claim 32 line 2 states "said outbound communication", previously plural communications.

Claim 32 line 5 states "said encrypted outbound communication", previously plural communications.

Claim 33 depends from claim 36.

Claim 34 lines 1-2 states "... inbound communication", previously communications.

Claim 35 lines 2-3 use acronyms, there is no definition in this line of claims for the acronyms used.

Claim 38 lines 2-3 states "said outbound communication", previously plural communications.

Claim 41 lines 1-2 states "...inbound communication", previously communications.

Claim 43 line 4 states "said outbound communication", previously plural communications.

Claim 49 line 20 states "said at least one secured inbound communications", would be better as "said secured inbound communications" to remain consistent with previous references in the claim.

Appropriate correction is required.

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13. The examiner has provided a number of examples of the claim deficiencies in the above, however, the list of deficiencies may not be all inclusive. Applicant should refer to these as examples of deficiencies and should make all the necessary corrections to eliminate the claim objections.

Claim Rejections - 35 USC § 112

14. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- 15. Claim 1 recites the limitation "said at least said portion of said energy distribution network" in lines 13-14. There is insufficient antecedent basis for this limitation in the claim.
- 16. Claim 1 recites the limitation "said energy distribution network" in lines 13-14. There is insufficient antecedent basis for this limitation in the claim.
- 17. Claim 8 recites the limitation "said outbound communication" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim. Previously "outbound communications prior to encryption", "said encrypted outbound communications" and "said outbound communications".

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- 18. Claim 8 recites the limitation "said inbound communication" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim. Previously "secured inbound communications prior to decrypting", "secured inbound communications after decrypting", "at least one secured inbound communication" and "inbound communications".
- 19. Claim 16 recites the limitation "the sender" in line 2. There is insufficient antecedent basis for this limitation in the claim.
- 20. Claim 25 recites the limitation "said at least said portion of said energy distribution network" in lines 14-15. There is insufficient antecedent basis for this limitation in the claim.
- 21. Claim 25 recites the limitation "said energy distribution network" in line 15. There is insufficient antecedent basis for this limitation in the claim.
- 22. Claim 25 recites the limitation "said energy distribution system interface" in lines 15-16. There is insufficient antecedent basis for this limitation in the claim.
- 23. Claim 40 recites the limitation "the sender" in line 2. There is insufficient antecedent basis for this limitation in the claim.
- 24. Claim 49 recites the limitation "said at least said portion of said energy distribution network" in line 13. There is insufficient antecedent basis for this limitation in the claim.

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- 25. Claim 49 recites the limitation "said energy distribution network" in line 13. There is insufficient antecedent basis for this limitation in the claim.
- Due to the vagueness and a lack of a clear definition of the terminology and phrases used in the specification and claims, the claims have been treated on their merits as best understood by the examiner.

Claim Rejections - 35 USC § 102

27. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 28. Claims 1, 25 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Kertesz et al (U.S. Pat 5,764,155). The claimed invention reads on Kertesz et al as follows:

Kertesz et al discloses an energy management device (reference number 122) and a method of communicating by an energy management device (claim 1) for use in an energy management architecture (figure 2, 3) for managing an energy distribution system (abstract) said energy management architecture comprising a network (reference numbers 126, 128) said energy management device comprising an energy distribution system interface operative to couple said energy management device with at least a portion of said energy distribution system (figure 2, 3, col. 10 lines 10 – col. 11 line 14, connects to devices which are in connection with the energy distribution system), a network interface operative to couple said energy management device

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with said network for transmitting outbound communications to said network and receiving inbound communications from said network (col. 6 lines 3-18, col. 10 lines 10 - col. 11 line 14) said inbound communications comprising first energy management data and said outbound communications comprising second energy management data (col. 6 lines 3-34, it is inherent that inbound would be measured data from devices and outbound would be control or other data), a processor coupled with said network interface and said energy distribution system interface (inherent to reference number 122, would contain a processor) said processor operative to perform at least one energy management function on said at least said portion of said energy distribution network via said energy distribution system interface (collection of data is at least one management function), said processor further operative to process said first energy management data and generate said second energy management data as a function of said energy management function (col. 11 line 15 – col. 12 line 5), wherein at least one of said inbound communications comprises a secured inbound communications, said network interface further comprising a security module operative to secure said outbound communications and validate said at least one secured inbound communications (col. 6 lines 10-18, col. 47 lines 1-11). Examiner would like to point out that any reference to specific figures, columns and lines should not be considered limiting in any way, the entire reference is considered to provide disclosure relating to the claimed invention. The claims given a broad reasonable interpretation and are therefore anticipated by Kertesz et al.

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Claim Rejections - 35 USC § 103

29. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

30. Claims 2-14, 16-24, 26-37 and 39-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kertesz et al (U.S. Pat 5,764,155).

Kertesz et al teaches most all of the instant invention as applied to claims 1, 25 and 49 above. Kertesz et al fails to teach specific forms of encryption, authentication, transmission, retransmission, Pretty Good Privacy, public keys, secure mail, signatures, etc.

Official notice is taken that network and computer based communications using security measures was well known at the time the invention was made in analogous art of Milsted et al (U.S. Pat 6,263,313), Clawson (U.S. Pat 6,112,304) and Reed et al (U.S. Pat 5,862,325), not to mention that the U.S. Patent and Trademark office has established in the art classifications an entire class dedicated to secure data communications between computing devices (class 713/150-

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181). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to develop secure communications between processor based devices communicating on a data network because security measures were all well known in the art of data networks and data processor communications.

Therefore, it would have been obvious to modify Kertesz et al to obtain the invention as specified in claims 2-14, 16-24, 26-37 and 39-48.

31. Claims 15 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kertesz et al (U.S. Pat 5,764,155) in view of official notice as applied to claims 2-14, 16-24, 26-37 and 39-48 above, and further in view of Bisbee et al (U.S. Pub 2001/0002485).

Kertesz et al in view of official notice teaches an energy management device with various security configurations as recited in claims 2-14, 16-24, 26-37 and 39-48 for the reasons above, differing from the invention as recited in claims 15 and 38 in that their combined teachings are silent on XHTML and XML signing.

Bisbee et al teaches XHTML and XML signing (paragraph 19).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the XHTML and XML signing for secure data communications of Bisbee et al in the energy management device of Kertesz et al, because the Bisbee et al teaches numerous security advantages and specifically that the use of XHTML and XML signing can be applied recursively, to provide signature and protection layering, improving security of communications (paragraph 19).

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Double Patenting

32. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

33. Claims 1 and 49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12, 27, 29 (as filed and prosecuted 43, 58 and 60) of U.S. Patent Application No. 10/689,895 (U.S. Pat Number not yet assigned, application allowed). Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following:

The claims of patent/application 10/689,895 contain every element of claims of the instant application and as such anticipates claims 1 and 49 of the instant application. *In re Goodman*, 29 USPQ2d 2010 (CAFC 1993)

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. <u>In re Longi</u>, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); <u>In re Berg</u>, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus)." ELI LILLY AND COMPANY v BARR

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LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

Claims 1, 25 and 49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 126, 127 (as filed and prosecuted 248-250) for claims 1 and 49 and over claims 83, 97 (as filed and prosecuted 212, 243) of U.S. Patent Application No. 09/723,564 (U.S. Pat Number not yet assigned, application allowed). Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following:

The claims of patent/application 09/723,564 contain every element of claims of the instant application and as such anticipates claims 1, 25 and 49 of the instant application. *In re Goodman*, 29 USPQ2d 2010 (CAFC 1993)

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. <u>In re Longi</u>, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); <u>In re Berg</u>, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus)." <u>ELI LILLY AND COMPANY v BARR LABORATORIES</u>, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

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Conclusion

35. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul L. Rodriguez whose telephone number is (571) 272-3753. The examiner can normally be reached on 6:00 - 4:30 T-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo P. Picard can be reached on (571) 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul L Rodriguez Primary Examiner Art Unit 2125

PLR 9/15/05